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Attorneys for Defendant,
The Bank of New York

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOHN COX, an individual;

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON fka
THE BANK OF NEW YORK, AS TRUSTEE
FOR THE CERTIFICATE HOLDERS
CWALT, INC., ALTERNATIVE LOAN
TRUST 2006-39CB, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-
39CB; BANK OF AMERICA HOME LOANS
SERVICING, LP; et al.,

Defendants.

Case:

**DEFENDANT'S PETITION FOR
REMOVAL OF CIVIL ACTION**

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEVADA:

The removing party, The Bank of New York Mellon fka The Bank of New York, as
Trustee for the Certificate Holders CWALT, Inc., Alternative Loan Trust 2006-39CB, Mortgage
Pass-through Certificates, Series 2006-39CB ("BONY" and/or "Defendant"), respectfully shows:

1. BONY is a Defendant in the above-entitled action.
2. That the above-entitled action was commenced in the Eighth Judicial District Court
of the State of Nevada, in and for the County of Clark, and is now pending in that Court under the
designated Case No. A602663, Department XIII.
3. Process was served upon BONY on December 14, 2009.

1 4. This case involves claims by Plaintiff that the Defendants improperly processed,
2 serviced and transferred his home mortgage loan.

3 This case is one of many that have recently been filed across the country by homeowners
4 seeking to simply stall or delay foreclosure proceedings after the plaintiffs have long stopped
5 making the required mortgage payments.
6

7 5. This Petition for Removal is timely and proper under 28 U.S.C. §1446(b) because it
8 is being filed within thirty days after Defendant was served with a copy of Plaintiff's state court
9 Complaint and within one year from when Plaintiff commenced his state court action.

10 6. Diversity jurisdiction under 28 U.S.C. §1332 exists because this action is between
11 citizens of different states and/or countries and the amount in controversy exceeds \$75,000.
12

13 7. Plaintiff is a citizen of Nevada. Defendants are foreign corporations.

14 8. The amount in controversy exceeds \$75,000. Plaintiff is seeking to void the real
15 estate contract he signed when he purchased his home. His Complaint is similar to many other
16 complaints filed nationwide by homeowners facing foreclosure. Plaintiff's Complaint appears to
17 allege that somehow the purchase money for the home, and subject to the mortgage contract, never
18 actually changed hands. This type of complaint demonstrates a willful ignorance of how the act of
19 borrowing money for a mortgage actually occurs.
20

21 9. The removing defendant bears the burden of proving by a preponderance of the
22 evidence that the amount in controversy exceeds \$75,000. *Singer v. State Farm Mut. Auto. Ins.*
23 *Co.*, 116 F.3d 373, 376 (9th Cir. 1997). If it is "'facially apparent' from the complaint that the
24 plaintiff seeks damages sufficient to create federal jurisdiction, then the case should be remanded
25 'only if it appears to a legal certainty that the claim is actually for less than the jurisdictional
26 minimum.'" *Davis v. Advanced Care Techs., Inc.*, 2007 U.S. Dist. LEXIS 32348 at *3 (E.D. Cal.
27 2007) (quoting *Singer*, 116 F.3d at 376); *see also Campbell v. Bridgestone/Firestone, Inc.*, 2006
28 U.S. Dist. LEXIS 16113 at *7 (E.D. Cal. 2006) (in products liability suit, amount-in-controversy

1 requirement was satisfied where plaintiff sought unspecified amount of compensatory damages for
2 wage loss, hospital and medical expenses, general damages, and loss of earning capacity); *Yong v.*
3 *Hyatt Regency Sacramento*, 2007 U.S. Dist. LEXIS 9492 at *3-4 (E.D. Cal. 2007) (where plaintiff
4 asserted a discrimination claim seeking “compensatory damages, emotional distress damages,
5 punitive damages, and attorneys fees,” the amount in controversy was well above the jurisdictional
6 requirement solely “by nature of [the plaintiff’s] claims”). Here, given the damages sought by
7 Plaintiff where Plaintiff is seeking to void a real estate contract, it is facially apparent from his
8 Complaint that the amount in controversy exceeds \$75,000.

10 10. This action may be properly removed to this Court under 28 U.S.C. §1441(a)
11 because this Court has original jurisdiction over this action under 28 U.S.C. §§1332 and 1367, and
12 because this action was commenced within the judicial district of the United States District Court
13 for the District of Nevada.

15 11. Copies of all process, pleadings and other orders served upon BONY are attached
16 hereto.


18 12. A true and correct copy of this Petition for Removal will be provided to Plaintiff
19 and filed with the Clerk of the Eighth Judicial District Court of the State of Nevada, Department
20 XIII.

21 WHEREFORE, Defendant prays that this action be removed.

22 DATED this 24 day of December, 2009.

23 LEWIS AND ROCA LLP

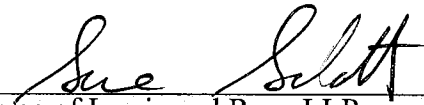
24
25 By


J. CHRISTOPHER JORGENSEN, ESQ.
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Defendant The Bank of New
York

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made on the 24 day of December 2009 by depositing a copy for mailing, first class mail, postage prepaid, at Las Vegas, Nevada, to the following:

David J. Winterton, Esq.
Richard L. Doxey, Esq.
211 No. Buffalo Drive, Ste. A
Las Vegas, NV 89145
Attorneys for Plaintiff


an employee of Lewis and Roca LLP

COMP

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN COX an individual;

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON
FKA THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATE HOLDERS CWALT, INC.,
ALTERNATIVE LOAN TRUST 2006-
39CB, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-39CB;
BANK OF AMERICA HOME LOANS
SERVICING, LP; DOES I through X and
ROES XI through XX

Defendants.

Case No.:
Dept. No.:

COMPLAINT

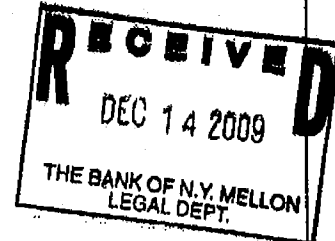
**[Arbitration Exempt--Title to
Real Property]**

COMES NOW, Plaintiff, JOHN COX, an individual, by and through counsel, David J. Winterton & Assoc., Ltd., hereby submits this Complaint against Defendants, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-39CB,) MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-39CB; BANK OF AMERICA HOME LOANS SERVICING, LP; DOES I through X and ROES XI through XX and represents the following to this Honorable Court:

FILED

OCT 29 2009

John J. Winterton
CLERK OF COURT



A-09-602663-C
X111

NATURE OF ACTION

1. This Complaint is for breach of contract, fraud and misrepresentation.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action under § 6, article 6 of the Nevada Constitution.
3. This Court has jurisdiction over this matter pursuant to N.R.S. 4.370.
4. Venue is proper in this Judicial District under N.R.S. § 13.010 and 13.040.

PARTIES

5. The following are real parties of interest pursuant to N.R.C.P. Rule 17 and have been authorized to bring this cause of action.
6. Plaintiff, JOHN COX (hereinafter "Cox") is an individual who at all times relevant was residing Clark County Nevada.
7. Defendant, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-39CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-39CB ("Mellon Bank") has at all times relevant herein handled or owned loan(s) and thus doing business in Clark County Nevada.
8. Defendant, BANK OF AMERICA HOME LOANS, (hereinafter "Bank of America") is an entity to at all times relevant herein was doing business in Clark County, Nevada.
9. The true names and capacities of Defendants sued herein as DOES I through X, inclusive, and each of them, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs will seek to amend this complaint to set forth the true names and capacities of said fictitiously named Defendants when the same have been fully ascertained.
10. The true names and capacities of Defendants sued herein as DOES XI through XX, inclusive, and each of them, are unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names. Plaintiffs will seek to amend this complaint to set forth the true names and capacities of said fictitiously named Defendants when the same

1 have been fully ascertained.

2 **GENERAL ALLEGATIONS**

- 3 11. On or about September 26, 2006, Mr. Cox purchased a certain piece of property located
4 at 8132 Southern Comfort Avenue, Las Vegas, NV 89131. (hereinafter "Property").
- 5 12. On or about September 28, 2009, Mr. Cox obtained a loan from DHI Mortgage Company
6 Limited.
- 7 13. On or about March 12, 2009, Mortgage Electronic Registration System filed a Default
8 against Cox.
- 9 14. On or about March 17, 2009, there was a substitution of Trustee from Mortgage
10 Electronic Registration System to Reconstruct Company NA.
- 11 15. There is no recorded interest to the sale of Bank of America.
- 12 16. On or about June 18, 2009, there was a Notice of the Trustee's Sale Date.
- 13 17. On or about July 16, 2009, Cox entered into a Home Affordable Modification Trial
14 Period Plan with Bank of America Home Loans Servicing LP.
- 15 18. Mr. Cox was informed that the foreclose had been stayed.
- 16 19. On or about July 17, 2009, Bank of America foreclosed on the Property.
- 17 20. On or about July 17, 2009, there was an assignment from Bank of America to Mellon
18 Bank.
- 19 21. Mellon Bank appears to be the holder of the foreclosed assets of Bank of America.
- 20 22. The Home Affordable Modification Trial Period Plan required payment to be made as
21 follows:

Payment	Amount	Due Date
1	\$2,216.50	August 2, 2009
2	\$2,216.50	September 2, 2009
3	\$2,216.50	October 1, 2009

- 22
- 23
- 24
- 25
- 26 23. Cox complied with each and every term of the Home Affordable Modification Trial
27 Period Plan and made the payments.
28

1 24. Bank of America accepted each and every one of the payments made by Cox.

2 **FIRST CAUSE OF ACTION**

3 (Fraud)

4 25. Plaintiff reallege each and every one of the foregoing paragraphs numbered 1 through 24,
5 and incorporate them herein by reference.

6 26. Bank of America made the representation that it would continue the foreclosure while
7 Cox worked on a Home Affordable Modification Trial Period Plan.

8 27. Bank of America represented that the Property had not been foreclosed upon and Cox
9 made payment pursuant to the Home Affordable Modification Trial Period Plan.

10 28. Bank of America accepted the payments that were made by fraud and/or the foreclose
11 was obtained by fraud in that they stated they would stop the foreclose.

12 29. Cox relied upon the representations of Bank of America.

13 30. If Cox did not know that the foreclosure was not stopped, he would have filed
14 bankruptcy and saved his home.

15 31. Cox has now lost the title to his home and has lost the money that was paid for the
16 monthly payments obtained by fraud.

17 32. Cox has now been damaged in excess of \$10,000.00.

18 **SECOND CAUSE OF ACTION**

19 (Breach of Contract)

20 33. Plaintiff reallege each and every one of the foregoing paragraphs numbered 1 through 32,
21 and incorporate them herein by reference.

22 34. Bank of America entered into a Home Affordable Modification Trial Period Plan with
23 Cox.

24 35. Bank of America agreed to stop the foreclosure and that the "Servicer will suspend any
25 scheduled foreclosure state, provided I (Cox) continue to meet the obligation under this
26 Plan,...".

27 36. The foreclosure was not suspended and Bank of America breached their contract.

28 37. As a result of the breach, Cox has been damaged in excess of \$10,000.00.

1 38. Further, Plaintiff's request attorney fees and costs in this matter.

2 **THIRD CAUSE OF ACTION**

3 (Misrepresentation)

4 39. Plaintiff reallege each and every one of the foregoing paragraphs numbered 1 through 38,
5 and incorporate them herein by reference.

6 40. Bank of America made the representation that it would continue the foreclosure while
7 Cox worked on a Home Affordable Modification Trial Period Plan.

8 41. Bank of America represented that the Property had not been foreclosed upon and Cox
9 made payment pursuant to the Home Affordable Modification Trial Period Plan.

10 42. Bank of America accepted the payments that were made by fraud and/or the foreclose
11 was obtained by fraud in that they stated they would stop the foreclose.

12 43. Cox relied upon the representations of Bank of America.

13 44. If Cox did not know that the foreclosure was not stopped, he would of filed bankruptcy
14 and saved his home.

15 45. Cox has now lost the title to his home and has lost the money that was paid for the
16 monthly payments obtained by fraud.

17 46. Cox has now been damaged in excess of \$10,000.00.

18 **FOURTH CAUSE OF ACTION**

19 (Quiet Title)

20 47. Plaintiff reallege each and every one of the foregoing paragraphs numbered 1 through 46,
21 and incorporate them herein by reference

22 48. Based upon the above facts, the Plaintiff requests that title to the Property should be
23 changed back to Cox.

24 49. The title to the Property cannot pass based upon Fraud or Misrepresentation.

25 50. The title should now be quieted and placed back into Cox's name.

26 **FIFTH CAUSE OF ACTION**

27 (Injunction)

28 51. Plaintiff reallege each and every one of the foregoing paragraphs numbered 1 through 50,

1 and incorporate them herein by reference

2 52. The Plaintiff has been forced to retain legal counsel in this matter and is entitled to
3 receive their attorney fees and costs.

4 WHEREFORE, Plaintiff prays for the following relief from Defendants:

- 5 1. For general and compensatory and consequential damages in excess of \$10,000.00;
6 2. For the Property to be placed back into Cox's name;
7 3. For ancillary damages including attorney's fees and costs;
8 4. For any other equitable or legal relief that the court deems appropriate;

9 DATED this 29 day of October, 2009

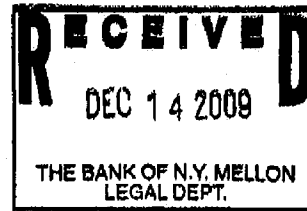
10 DAVID J. WINTERTON & ASSOC., LTD.

11 By: 
12

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SUM

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DISTRICT COURT
CLARK COUNTY NEVADA

JOHN COX an individual;

Plaintiff,

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THE BANK OF NEW YORK MELLON
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ROES XI through XX

Defendants.

Case No.

Dept. No.

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATE HOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2006-39CB, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-39CB

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
Issued at the direction of:

DAVID J. WINTERTON & ASSOC., LTD.

By:

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
David J. Winterton & Assoc.
211 N. Buffalo Dr. Ste. A
Las Vegas, Nevada 89145
(702) 363-0317

MARY ANDERSON

OCT 29 2009

By:

Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89115



NOTE: When service is publication, add a brief statement of the object of the action.
See Rules of Civil Procedure, Rule 4(b)